

# Submission on the Inquiry into Greenwashing by the Senate Standing Committees on Environment and Communications

**21 June 2023**

**Contact:** **Olivia Irvine**  
President, NSW Young Lawyers

**Amelia Cook**  
Chair, NSW Young Lawyers Environment and Planning Law Sub-Committee

**Contributors:** Chris Alchian, Jessica Lighton, Andrew Mahler, Stephanie Millar and Phoebe Saxon.

## The NSW Young Lawyers Environment and Planning Sub-Committee (**Sub-Committee**) make the following submission in response to the Inquiry into Greenwashing by the Senate Standing Committees on Environment and Communications

### **NSW Young Lawyers**

NSW Young Lawyers is a division of The Law Society of New South Wales. NSW Young Lawyers supports practitioners in their professional and career development in numerous ways, including by encouraging active participation in its 15 separate Sub-Committees, each dedicated to particular areas of practice. Eligibility applies to all NSW lawyers (solicitors and barristers) under 36 years and/or in their first five years of practice, as well as law students. NSW Young Lawyers currently has over 15,000 members.

NSW Young Lawyers accepts the science and wide-ranging effects of climate change, including as outlined by the United Nations Intergovernmental Panel on Climate Change in its leading expert reports. NSW Young Lawyers considers that Australia has the ability and a responsibility to rapidly reduce emissions and actively help to keep the world's emissions within its remaining 'carbon budget'.

NSW Young Lawyers recognises that there is a climate emergency, posing an unprecedented challenge for human rights and the rule of law. In order for there to be intergenerational equity and climate justice, as well as interspecies equity and ecological sustainability, the law needs to enable and require Australia to rapidly decrease CO<sub>2</sub> (and other greenhouse gas) emissions and to be legally accountable for their adverse contributions to the impacts of climate change.

The Sub-Committee is comprised of a group of approximately 500 members interested in our natural and built environment. The Sub-Committee focuses on environmental and planning law issues, raising awareness in the profession and the community about developments in legislation, case law and policy. The Sub-Committee also concentrates on international environmental and climate change laws and their impact within Australia.

## Summary of recommendations

1. The ACCC should prescribe detailed regulatory standards for businesses on what constitutes misleading and deceptive conduct in relation to environmental claims, including outlines of standards associated with terms that make inferences to an organisation's active commitment to environmental sustainability.
2. The Senate should further engage with regulatory authorities like the ACCC to address and rework shortfalls in Australia's existing regulatory framework so that it may reflect international best practice for environmental and sustainability claims in advertising.
3. The ACCC should develop a policy modelled on the European Union's Green Claims Directive. Such a policy should be developed in collaboration with Ad Standards and establish a framework and timeline to introduce legislation to ensure that the voluntary, explicit environmental claims made by business can be substantiated and presented accurately to the consumer.
4. Substantiation of environmental claims and labelling schemes should be independently verified, requiring the development of verification procedures by the Australian Government. A certificate on conformity with the standards, as well as accessible information to access the "substantiation" by way of a weblink, QR Code or equivalent on the product itself, should be included to assist consumers to make informed choices.

## Introduction

1. The Sub-Committee welcomes the opportunity to comment on the Senate Inquiry into Greenwashing.
2. 'Greenwashing' refers to the making of claims as to the environmental, ethical or sustainability credentials of a product that are false, misleading, or lack reasonable basis.<sup>1</sup> The Sub-Committee understands that the focus of the Inquiry is consumer 'products' including household products and appliances, food and drink packaging, cosmetics, clothing and footwear, as well as products in the energy and vehicles industries.<sup>2</sup>
3. The Sub-Committee submits that the current regulatory framework incorrectly places the onus on consumers to "verify claims or spend hours researching the various claims they encounter" whereas it should be "up to industry and government to make green claims worthy of consumer attention".<sup>3</sup>
4. Whilst acknowledging the gradual upward trend in regulatory enforcement actions, the Sub-Committee submits that until an enforceable framework outlining clear and transparent standards is produced by the relevant regulatory authorities and made accessible to the average consumer, the current reliance on consumer action will continue and result in further greenwashing examples.
5. This submission addresses the Inquiry's terms of reference marked (a) to (e).

### **A. The environmental and sustainability claims made by companies in industries including energy, vehicles, household products and appliances, food and drink packaging, cosmetics, clothing and footwear**

6. Environmental and sustainability claims occur across a range of industries, taking the form of product specific claims on packaging, websites, advertisements or social media; company-wide claims on websites or in corporate social responsibility statements and reporting documents; and claims using logos and symbols (including certification trademarks) on packaging, websites or advertisements.<sup>4</sup>
7. As revealed by the Australian Competition and Consumer Commission's (ACCC) March 2023 report, 'Greenwashing by Businesses in Australia', environmental and sustainability claims made by businesses online include:
  - a. Claims such as 'green', 'eco-friendly', 'sustainable' and 'responsible', which are vague, undefined and unqualified, and have little value for consumers seeking to make an informed purchasing decision;
  - b. Claims that lack substantiating evidence; and

---

<sup>1</sup> Australian Competition and Consumer Commission, *Greenwashing by Businesses in Australia* (Report, 2023) <<https://www.accc.gov.au/system/files/Greenwashing%20by%20businesses%20in%20Australia.pdf>> 3 ('ACCC Greenwashing Report'); Australian Securities & Investments Commission, 'How to Avoid Greenwashing When Offering or Promoting Sustainability-related Products (Information Sheet 271, June 2022) 3 ('ASIC Information Sheet').

<sup>2</sup> Senate Standing Committee on Environment and Communications, 'Greenwashing' (Web Page, 29 March 2023) <[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Environment\\_and\\_Communications/Greenwashing](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Greenwashing)>.

<sup>3</sup> Consumer Policy Research Centre, *The Consumer Experience of Green Claims in Australia* (Report, December 2022) <[https://cprc.org.au/wp-content/uploads/2022/12/CPRC-Green-Claims\\_Final.pdf](https://cprc.org.au/wp-content/uploads/2022/12/CPRC-Green-Claims_Final.pdf)> ('Consumer Policy Research Centre Report').

<sup>4</sup> ACCC Greenwashing Report (n 1) 3.

- c. Aspirational claims about a business's environmental and sustainability goals without providing information or context as to how the goals can be achieved by the business, such as 'net zero' targets.<sup>5</sup>
8. Anecdotally, members of the Sub-Committee have identified the following examples of environmental and sustainability claims or representations:
  - a. **Energy:** advertisements by energy suppliers that emphasise renewable energy; 'net zero' emissions products or operations;
  - b. **Vehicles:** vehicle manufacturer net-zero plans; claims of reduced tailpipe emissions;
  - c. **Household products and appliances:** 'flushable' wipes; 'eco-friendly' or 'non-toxic' cleaning products; 'plant-based' ingredients;
  - d. **Food and drinks:** 'organic', 'plant-based' and 'cruelty-free' labelled foods; 'sustainably sourced' palm oil or cocoa; 'eco' coffee cups;
  - e. **Cosmetics:** labels that the products are 'cruelty-free', 'vegan' or that their packaging is made from 'recycled' materials; and
  - f. **Clothing and footwear:** labels that products are 'cruelty-free', 'organic', 'responsibly-sourced', 'recyclable' or made from 'recycled' materials.
9. The Sub-Committee notes that until the relevant regulatory bodies publish some form of guidance which establishes minimum standards and criteria associated with these types of claims, there will continue to be confusion amongst consumers.
10. The Sub-Committee therefore submits that the ACCC should prescribe detailed regulatory standards for businesses and consumers which clearly outline what constitutes misleading or deceptive conduct in relation to environmental claims, including minimum standards associated with particular terms, like those listed in paragraph 8 above. This guidance should incorporate the advertising standards already established by the Environmental Claims Code (**ECC**) (administered by the Ad Standards body as part of the Australian Association of National Advertisers) so as to strengthen their applicability and enforcement.

**Recommendation 1:**

The ACCC should prescribe detailed regulatory standards for businesses on what constitutes misleading and deceptive conduct in relation to environmental claims, including outlines of standards associated with terms that make inferences to an organisation's active commitment to environmental sustainability.

## **B. The impact of misleading environmental and sustainability claims on consumer**

11. The Sub-Committee understands that consumers use green claims to make purchasing decisions, with 45% of Australians always or often considering sustainability as part of their purchasing decision-

---

<sup>5</sup> Ibid 5-7.

making.<sup>6</sup> Consumers are, therefore, highly susceptible to substantial negative implications caused by greenwashing.

12. The Sub-Committee submits that the impacts of greenwashing on consumers include:

- a. **Financial:** consumers are more likely to spend more on 'green' products that do not claim to be green, particularly in the banking, finance and superannuation sectors where large amounts of money are at stake.<sup>7</sup>
- b. **Confusion and scepticism:** vague environmental claims cause consumer confusion and scepticism,<sup>8</sup> in turn potentially diverting consumers away from genuinely 'green' products due to sustainability 'noise'.<sup>9</sup>
- c. **Reduced green competition:** greenwashing "can erode investor confidence in the market for sustainability-related products and poses a threat to a fair and efficient financial system".<sup>10</sup> Because consumers may more harshly judge companies making climate and sustainability conscious efforts compared to companies that make no such claims,<sup>11</sup> and because companies (afraid of regulatory, consumer or shareholder action) adopt practices of 'green hushing',<sup>12</sup> competition in green products may be reduced.
- d. **Environmental:** greenwashing can also detrimentally impact the environment where the environmental or sustainability claim is inherently untrue and do not fulfil the environmental commitments they purport to advocate in turn impacting the state of world in which consumers work, live and recreate.<sup>13</sup>

## **C. & D. Domestic and international examples of regulating companies' environmental and sustainability claims and advertising standards in relation to environmental and sustainability claims**

13. Environmental and sustainability claims in advertising have been regulated in Australia since 2009 by the ECC. However, the Sub-Committee submits that the Senate should consider the standards adopted in the United Kingdom (UK), France and the European Union (EU).

---

<sup>6</sup> *Consumer Policy Research Centre Report* (n 3).

<sup>7</sup> Kristal Burry, 'Consumer Concerns: Consumer Protections for Shoppers Seeking Sustainable Purchases: What Is Missing?' (2023) 31(1) *Australian Journal of Competition and Consumer Law* 76; *Consumer Policy Research Centre Report* (n 2).

<sup>8</sup> Nancy Furlow, 'Greenwashing in the New Millennium' (2010) 10(6) *Journal of Applied Business and Economics* 22; Hendi Mustiko Aji and Bayu Sutikno, 'The Extended Consequence of Greenwashing: Perceived Consumer Skepticism' (2015) 10(4) *International Journal of Business and Information* 433.

<sup>9</sup> Kristal Burry (n 7); *Consumer Policy Research Centre Report* (n 3).

<sup>10</sup> ASIC Information Sheet' (n 1).

<sup>11</sup> Menno D T De Jong, Karen M Harkink and Susanne Barth, 'Making Green Stuff? Effects of Corporate Greenwashing on Consumers' (2018) 32(1) *Journal of Business and Technical Communication* 77.

<sup>12</sup> John Letzing, 'What Is 'Greenhushing' and Is it Really a Cause for Concern?' *World Economic Forum* (Web Page, 18 November 2022) <<https://www.weforum.org/agenda/2022/11/what-is-greenhushing-and-is-it-really-a-cause-for-concern/>>.

<sup>13</sup> Sebastião Vieira de Freitas Netto et al, 'Concepts and Forms of Greenwashing' 32(19) *Environmental Sciences Europe* 1 <<https://enveurope.springeropen.com/articles/10.1186/s12302-020-0300-3>>.

14. The Sub-Committee submits that in circumstances where the number of consumer complaints under the ECC are increasing (where only one complaint under the ECC has been upheld by the Ad Standards Community Panel)<sup>14</sup> and regulatory action being commenced by the ACCC is increasing, it is apparent that current advertising standards are not adequately equipped to address shifting consumer attitudes and expectations regarding environmental claims and the rise of greenwashing.
15. In these circumstances, the Sub-Committee invites the Senate to consider domestic and international examples of regulating companies' environmental and sustainability claims.
16. Recent legislative and regulatory developments in France, the UK and the EU coupled with the 2022 United Nations guidelines on net-zero commitments by businesses and non-state entities<sup>15</sup> show that the existing Australian regulatory framework does not reflect current internationally accepted best practice on environmental claims in advertising.
17. In the UK, the Digital Markets, Competition and Consumer Bill (expected to be published later in 2023) would grant new powers to the UK Competition and Markets Authority (**CMA**), the UK's advertising watchdog, to levy fines against businesses for breaches of consumer law.<sup>16</sup> These new powers are intended to work in tandem with the new rules from the UK's Financial Conduct Authority that restrict how terms such as 'green', 'ESG' and 'sustainable' can be used by businesses when advertising or reporting on investment products.<sup>17</sup> The CMA has also sought to regulate greenwashing by way of its Green Claims Code. The Green Claims Code is a guide that reflects existing consumer protection law requirements, including the *Consumer Protection from Unfair Trading Regulations 2008* and *Business Protection from Misleading Market Regulations 2008*, which are enforced by the Advertising Standards Authority.<sup>18</sup>
18. On 1 January 2023, France introduced legislation combatting greenwashing and specifically targeting the use of terms such as 'carbon neutral' without supporting evidence.<sup>19</sup> The Climate and Resilience Law (which complements the French Consumer Code) prohibits businesses from advertising a product or service as 'carbon neutral', '100% offset' or any other equivalent phrase unless the business provides: a greenhouse gas (**GHG**) emissions report; information about how GHG emissions of the product or service are avoided, reduced or offset; and the method by which residual GHG emissions are offset.<sup>20</sup>

---

<sup>14</sup> Simone Fox Koob, 'Dodgy "Green Credentials" Spruikers Force Watchdog into Action', *Sydney Morning Herald* (online, 5 January 2023) <<https://www.smh.com.au/business/companies/dodgy-green-credentials-spruikers-force-watchdog-into-action-20230104-p5ca8m.html>>. See also Ad Standards Community Panel, 'Case Report 0202-20' (8 July 2020) <[https://adstandards.com.au/sites/default/files/reports/0202-20\\_0.pdf](https://adstandards.com.au/sites/default/files/reports/0202-20_0.pdf)>.

<sup>15</sup> United Nations' High-Level Expert Group on the Net Zero Emissions Commitments of Non-State Entities, 'Integrity Matters: Net Zero Commitments by Businesses, Financial Institutions, Cities and Regions' (March 2022).

<sup>16</sup> United Kingdom Treasury, *Autumn Statement 2022* (Policy Paper, 17 November 2022) <<https://www.gov.uk/government/publications/autumn-statement-2022-documents/autumn-statement-2022-Ztml#:~:text=The%20Autumn%20Statement%20sets%20out%20a%20package%20of%20targeted%20support,bill%20increases%20following%20the%20reevaluation>>.

<sup>17</sup> 'FCA Proposes New Rules to Tackle Greenwashing', *United Kingdom Financial Conduct Authority* (Web Page, 25 October 2022) <<https://www.fca.org.uk/news/press-releases/fca-proposes-new-rules-tackle-greenwashing>>.

<sup>18</sup> Competition and Markets Authority, 'Green Claims Code: Making Environmental Claims' (Guidance, 20 September 2021) <<https://www.gov.uk/government/publications/green-claims-code-making-environmental-claims>>.

<sup>19</sup> Jones Day, 'Greenwashing Landscape: Existing and Forthcoming Legislation in the United Kingdom and European Union', *Lexology* (Web Page, 21 April 2023) <<https://www.lexology.com/library/detail.aspx?g=0b76a997-e9a2-483a-8d71-8790c03d71e7>>.

<sup>20</sup> Ellen Ormesher, 'France's Leading Greenwashing Laws Could Go Wider: Global Brands Should Be Anxious', *The Drum* (Web Page, 9 February 2023).

19. Furthermore, if adopted, the proposed European Directive on the substantiation and communication of explicit environmental claims (**Green Claims Directive**) would introduce minimum criteria for making and substantiating environmental claims,<sup>21</sup> in addition to regulating the methodology, transparency and use of green labels as well as claims regarding future environmental performance.<sup>22</sup>
20. The Sub-Committee submits that similar reforms to the Australian legislative and regulatory advertising standards framework could curb greenwashing. We recommend that the Senate Inquiry engage with regulatory authorities to overhaul Australia's existing regulatory framework to reflect international best practice for environmental and sustainability claims in advertising, with a particular focus on ensuring businesses substantiate their environmental and sustainability claims.

**Recommendation 2:**

The Senate should further engage with regulatory authorities, like the ACCC, to address and rework shortfalls in Australia's existing regulatory framework so that it may reflect international best practice for environmental and sustainability claims in advertising.

## **E. Legislative options to protect consumers from greenwashing in Australia**

21. The Sub-Committee welcomes regulators like the ACCC making 'misleading conduct' in relation to greenwashing activities an enforcement priority for 2023.<sup>23</sup> Strengthening regulatory enforcement through the current reporting and complaints mechanisms presents one way to protect consumers by extending current principles of what constitutes misleading and deceptive conduct and cautioning businesses on the practical consequences of non-compliance.
22. Further, as explored above, whilst the ECC provides some form of guidance and standards for consumers and businesses, it is self-regulated by the advertisement industry and operates on the basis of receiving and responding to complaints after the fact. Further, determinations by the Ad Standards Industry Jury are not legally binding.
23. Due to the inherently reactive nature of these enforcement systems and limited accessibility, the Sub-Committee recommends further efforts are made to simplify and improve standards and reporting requirements to ensure transparency and allow consumers to make informed choices.

---

<sup>21</sup> *Proposal for a Directive of the European Parliament and of the Council on Substantiation and Communication of Explicit Environmental Claims (Green Claims Directive)* [2023] 2023/0085(COD).

<sup>22</sup> *Ibid.*

<sup>23</sup> Australian Competition and Consumer Commission, '2023–24 Compliance and Enforcement Priorities' (Media Release, 7 March 2023) <<https://www.accc.gov.au/media-release/competition-and-consumer-issues-in-essential-services-sustainability-among-2023-24-compliance-and-enforcement-priorities>>; See also Australian Government Clean Energy Regulator, 'Greenwashing Is a Government Compliance Priority' (Web Page, 28 April 2023) <<https://www.cleanenergyregulator.gov.au/About/Pages/News%20and%20updates/NewsItem.aspx?ListId=19b4efbb-6f5d-4637-94c4-121c1f96f6e&ItemId=1215>>.



24. Based on our exploration of existing global models, the Sub-Committee recommends the ACCC develop a policy modelled on the European Union’s Green Claims Directive. Such a policy should be developed in collaboration with Ad Standards and establish a framework and timeline to introduce legislation to ensure that where businesses make a voluntary, explicit environmental claim, it can be substantiated and presented accurately to the consumer.
25. Development of this policy and future legislation should incorporate aspects of the Green Claims Directive, including that to substantiate a claim a company should:
  - a. Identify whether a claim relates to the whole or part of a product;
  - b. Rely on widely recognised scientific evidence;
  - c. Identify whether a claim that improves environmental aspects leads to a significant harm in relation to environmental impacts such as climate change or biodiversity; and
  - d. Include primary information available to the trader on environmental impacts.
26. Further, such substantiation of environmental claims and labelling schemes would need to be independently verified, requiring the development of verification procedures by the government. A certificate on conformity with the standards, as well as accessible information to access the “substantiation” by way of a weblink, QR Code or equivalent on the product itself, would assist consumers to make informed choices.
27. As noted above, the Sub-Committee submits that the ACCC should publish best-practice guidance to accompany existing legislation on misleading or deceptive conduct outlining minimum standards associated with frequently used terms.

**Recommendation 3:**

The ACCC should develop a policy modelled on the European Union’s Green Claims Directive. Such a policy should be developed in collaboration with Ad Standards and establish a framework and timeline to introduce legislation to ensure that where businesses make a voluntary, explicit environmental claim, it can be substantiated and presented accurately to the consumer.

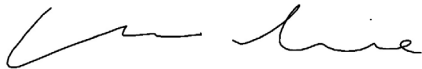
**Recommendation 4:**

Environmental claims and labelling schemes should be independently verified, requiring the development of verification procedures by the Australian Government.

## Concluding Comments

NSW Young Lawyers thank you for the opportunity to make this submission. If you have any queries or require further submissions, please contact the undersigned at your convenience.

**Contact:**



**Olivia Irvine**

President

NSW Young Lawyers

Email: [president@younglawyers.com.au](mailto:president@younglawyers.com.au)

**Alternate Contact:**



**Amelia Cook**

Chair

NSW Young Lawyers Environment and Planning Law  
Committee

Email: [envirolawexec@gmail.com](mailto:envirolawexec@gmail.com)